

~~2020~~ Report of the 2020 Special Committee for Review of Ordinances

Exhibit A

**Ordinances Impacting Traditionally Marginalized Communities
Recommended for Adoption**

1. An Ordinance Relative to Affordable Housing.

On November 2, 2020, Wayne Feiden, Director of Department of Planning and Sustainability appeared before the Committee. He testified regarding a proposed amendment to the Zoning Ordinance to create a local Affordable Housing Ordinance that would simplify the state comprehensive permit process, known as “40B.” At that time, the proposed ordinance was in its conceptual stage. On March 1, 2021, the Committee voted unanimously to recommend that the City adopt such an ordinance to promote housing affordability in the City.

2. Two-Family By Right in all Residential Districts.

On November 2, 2020, Director Feiden testified regarding a proposed amendment to the Zoning Ordinance to allow two-family residences by right in all residential zoning districts, including two detached single-family structures. At that time, the proposed ordinance had been introduced to the City Council and it was being reviewed by Council committees. On March 1, 2021, the Committee voted unanimously to recommend that the City adopt that zoning ordinance amendment ordinance to promote housing affordability in the City.

3. First Floor Residential Use in Downtown and Florence Center

On November 2, 2020, Director Feiden, testified regarding a proposed amendment to the Zoning Ordinance to allow residences on first floors in in Downtown Northampton (outside of the Central Business District) and in Florence Center (outside the Chestnut/Main/Maple business district). At that time, the proposed ordinance was in the drafting stage. Allowing residential uses on the first floor of commercial buildings outside core downtown areas would allow more people to live within walking distance of commercial centers, allow property owners more options, and create housing opportunities at all levels of the market. At that time, the proposed ordinance was in its conceptual stage. On March 1, 2021, the Committee voted unanimously to recommend that the City adopt such an ordinance to promote housing affordability in the City.

4. Housing Stability Notification Ordinance.

On November 17, 2020, Keith Benoit, CDGB Planner in the Office of Planning and Sustainability and Carmen Junno, a Member of the Northampton Housing Partnership, appeared before the Committee. They presented testimony regarding a proposed new ordinance that would require landlords of rental units or lenders foreclosing on a house to give tenants a list of financial and legal resources when serving a Notice to Quit

terminating a tenancy or when serving foreclosure documents.¹ Such notification may include documents such as Residential Assistance for Families in Transition (RAFT) and Emergency Rental and Mortgage Assistance (ERMA). Similar ordinances have been enacted in Cambridge and Somerville. On March 1, 2021, the Committee voted unanimously to recommend that the City adopt such a Housing Stability Notification Ordinance.

Ordinances Impacting Traditionally Marginalized Communities Not Recommended for Adoption

1. Rental Agency Fees.

On [fill in date], Carmen Junno, a Member of the Northampton Housing Partnership The Committee considered a, proposed an ordinance that would prohibit charging tenants a rental agency fee and requiring that any such fee be paid by the landlord. While the Committee believed that such an ordinance would alleviate the cost burden to renters, would positively impact traditionally marginalized communities, City Solicitor Alan Seewald advised the Committee that such legislation would violate the provision of the Home Rule Amendment to the Massachusetts Constitution that prohibits local legislation that alters civil relationships. According to Solicitor Seewald, the contract between the landlord and the rental agency, which requires that fees be paid by the prospective tenant, is such a civil relationship. On that basis, on March 1, 2021, the Committee voted unanimously not to recommend the adoption of such an ordinance.

2. Enforcement of “Ban the Box” Law.

On November 17, 2020, Tay Porco addressed the Committee during public comment urging the City to enforce the so-called Ban the Box law, which prohibits employers from inquiring into certain aspects of an employment applicant’s criminal history. The Ban the Box law is included in a statute that prohibits discrimination in employment, and it is enforceable by the Massachusetts Commission Against Discrimination, not by the City. On that basis, on March 1, 2021, the Committee voted unanimously not to recommend the adoption of such an ordinance.

3. Ordinance Legalizing Temporary Structures and to Repeal Ordinances Prohibiting Camping on Public Property.

On November 17, 2020, Tay Porco addressed the Committee during public comment and presented a demand that the City pass an ordinance legalizing temporary structures and repealing ordinances prohibiting camping on public property. On December 15, 2020,

¹ The Committee is cognizant of the both the time it takes to move new ordinances through committees and the prospect of the federal and state eviction and foreclosure moratoria ending in the near future. The Committee recognizes the important work that the Office of Planning and Sustainability has performed in compiling the resources for the proposed notification ordinance, and it urges that those resources be kept current, and that the City implement administratively the notifications that were proposed to be required of landlords and mortgagees by the recommended ordinance.

Councilor Nash reported that his review of the ordinances did not reveal any ordinances that prohibited camping on public land other than conservation land. On March 1, 2021, the Committee unanimously voted not to recommend any such ordinances. At the same time, the Committee voted to inform the City that it would oppose any ordinance that would impede those who choose to live outdoors.

4. Fair Chance Ordinances.

In a November 18, 2020, email, Tay Porco urged the Committee to recommend an ordinance that would prohibit landlords from accessing and using the criminal history when screening a proposed tenant. While the Committee believed that such an ordinance would mitigate discriminatory practices in the housing market, positively impact traditionally marginalized communities, City Solicitor Seewald advised the Committee that the Criminal Offender Record Information (CORI) statute, M.G. L. c. 6, § 167, et. seq., is a comprehensive state law that creates uniform access to criminal history information statewide. The CORI statute was amended a short time ago to specifically allow landlords to access such information and, therefore, the City cannot legislate in this area. On that basis, on March 1, 2021, the Committee voted unanimously not to recommend the adoption of such an ordinance.

5. Ordinance Banning Sale of Property Gifted to City.

In the November 18, 2020, email Tay Porco also proposed to the Committee an ordinance to ban the sale to private parties of property gifted to the City and, instead, to use such property for affordable housing. Solicitor Seewald informed the Committee that the properties they cited in the email were not gifted to the city, and that of the city properties sold during his years as City Solicitor were sold for some form of public benefit or to meet a community need. City buildings for sale were municipal buildings not used for housing and not set up to comply with sanitary code and other requirements for use as housing. On March 1, 2021, the Committee voted unanimously not to recommend such an ordinance.

6. Ordinance Incentivizing Against Long-Term Vacancies in Private Properties.

In the November 18, 2020, email, Tay Porco also proposed to penalize and incentivize against vacancies in private properties citing the fact that properties remain vacant for long periods of time while individuals live on the street. Without more specific proposals for limiting the rights of private property owners or involuntary acquisition of such properties, Solicitor Seewald could not provide an opinion on the legality of such an ordinance. On March 1, 2021, the Committee voted unanimously not to recommend such an ordinance.

7. Repeal of Anti-Panhandling Ordinances.

On November 30, 2020, Razi Beresin-Scher addressed the Committee during public comment and urged action to stop criminalizing and harassing unhoused people asking for money or panhandling on the street without a permit, citing c. 245 of the Code of Ordinances. On December 15, 2020, Solicitor Seewald informed the Committee that c. 245 dealt with commercial solicitation, not panhandling, that the Supreme Judicial Court had that day struck down the state anti-panhandling statute as a violation of the First Amendment, and that the City has no anti-panhandling ordinances. On that basis, on March 1, 2021, the Committee voted unanimously not to recommend the adoption of such an ordinance.